IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.MC.No. 4141 of 2006()

CC.824/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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PETITIONER:

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1. P.A. ABDUL HAKKIM,
   PRINTER & PUBLISHER, MADHYAMAM DAILY,
   IDIAL PUBLICATION TRUST,
   SILVER HILLS, KOZHIKODE.

2. O. ABDUL REHMAN, EDITOR,
   MADHYAMAM DAILY, PULLEPPADY, KOCHI.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. RAMESAN, SOCIAL WORKER,
   S/O. VELAYUDHAN, EDAMUTTATH HOUSE,
   CHERAMON DESOM, ERIYAD VILLAGE,
   KODUNGALLUR.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

R1 BY ADV. SRI.P.M.HARIS
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.P.A.MOHAMMED ASHROF

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 4141 of 2006

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Dated this the 8th day of March, 2007

O R D E R

What is the liability of a person who has declared himself to be the Printer and Publisher in respect of a publication? This is the crucial question that arises for consideration in this Crl.M.C.

2. On fundamental facts there is no dispute. The first respondent, who claims to be a social worker, is aggrieved by a defamatory publication against him in a news paper, of which accused 1 to 3 are the Printer and Publisher, Editor and the local news reporter respectively. Petitioners are accused 1 and 2 viz. the Printer and Publisher (A1) and the Editor (A2). At the moment, there is no contention that the publication, a copy of which is produced before Court, is not perse defamatory. The learned Magistrate, on the complaint by the first respondent, took cognizance of the offence punishable under Section 500 I.P.C. against all the three accused. The petitioners have rushed to this Court with this petition under Section 482 Cr.P.C. with the prayer that the complaint may be

quashed in so far as it relates to the petitioners by invoking the extra ordinary inherent jurisdiction available to this Court.

3. What is the reason? Eventhough claim for quashing is made on behalf of both the petitioners, i.e. Printer and Publisher (A1) and the Editor (A2), the learned counsel for the petitioner fairly does not press the claim for quashing of the proceedings in so far as the second petitioner (2nd accused) is concerned. That appeals to me as a very reasonable and fair stand taken by the learned counsel for the petitioners in the light of the decision in **Mathew** v. **Abraham** (2002 (3) KLT 282 (SC)). The second petitioner/accused is alleged to be the Editor of the daily. His name is printed as such in the daily. Section 7 of the Press and Registration of Books Act (hereinafter referred to as the Act) squarely applies and it is certainly for him to contend and establish in the trial that notwithstanding Section 7 of the said Act and notwithstanding the fact that his name is printed in the news paper as Editor, he is not responsible for choosing the materials. It must be noted that the second petitioner is declared to be the Editor proper and not the Managing Editor, Chief Editor or Resident Editor. It is hence not necessary for me to consider the claim of the second

petitioner for quashing the proceedings against him as that part of the claim is not pressed after discussions at the Bar.

4. We now come to the first accused, who is said to be Printer and Publisher of the daily. On that specific aspect no dispute is raised now before me. Of course, the counsel contends that no certified copy under Section 6 of the declaration under Section 5 has been produced. Be that as it may, there is the specific assertion that the first petitioner is the Printer and Publisher of the daily and in this Crl.M.C. there is no specific denial of that fact.

5. The learned counsel for the respondent contends that in the light of Section 7 of the Act, the first petitioner cannot at this stage claim that he is not responsible for the defamatory publication in the daily, of which he is undisputedly the Printer and Publisher. This calls for a detailed consideration of the stipulations in Section 7 of the Act, which I extract below:

> "**S.7. Office copy of declaration to be prima facie evidence.-** In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations (or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor) shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose

> name shall be subscribed to such declaration (or printed on such newspaper, as the case may be) that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every (newspaper) whereof the title shall correspond with the title of the (newspaper) mentioned in the declaration, (or the editor of every portion of that issue of the newspaper of which a copy is produced)."
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> (emphasis supplied)

6. It will be apposite in this context to consider the Act in its totality. The Act is one for regulation of printing presses and news papers, for the preservation of copies of books and newspapers printed in India and for the registration of books and newspapers. The preamble stipulates that it is expedient to provide for the regulation of printing presses and of news papers for preservation of copies of every book and news paper printed in India and for the registration of such books and newspapers. Part I contains Sections 1 and 2. Section 1 deals with definitions and Section 2 deals with repeal of the earlier Act. Part II contains Sections 5 to 8C and the crucial sections for our consideration would be Section 5, which deals with the obligation to show the name of owner and Editor printed in the publication (S.5(1) and also of the requirement of the printer and/or publisher making an appropriate declaration before the specified authority (S.5(2)). Section 6 deals with the authentication of such declaration as also

the right of persons to get copies of such declaration. It is thereafter that Section 7 extracted above appears.

7. On a simple analysis of the provisions of Section 7, it can be seen that it deals with the responsibility of the Printer and/or Publisher as also the Editor in respect of the publication. The Editor has no obligation to file any declaration under Section 5. That obligation is only for the Printer and Publisher. But there is an obligation that the publication must carry the name of the Editor also printed on it. The Printer and the Publisher can be identified from the declaration. The Editor can be identified by his name printed on the newspaper. The law wants it to be ascertained without any controversy as to who is the Printer and/or Publisher and the Editor. Of course the owner's name also has got to be printed as per Section 5(1) of the newspaper.

8. Section 7 in simple language makes the Printer and/or Publisher as also the Editor responsible for the entire (every portion of) publication in the newspaper. A presumption of law is incorporated that the fact that the Printer/Publisher is declared to be the Printer and Publisher in the declaration under Section 5 and the fact that the Editor is shown to be the Editor in the publication shall be sufficient evidence that they are the printer

and publisher and Editor of every portion of that newspaper. There can therefore be no question of any dispute about the responsibility of such Printer and/or Publisher declared under Section 5 or Editor, whose name is printed in the newspaper. That is the precise purpose of Section 7. A person who gets such a newspaper should not have to go round searching for the person responsible for the publication. Its Printer and Publisher can be identified by looking at the declaration, a copy of which can be obtained under Section 6. The Editor can be identified by looking at the publication where his name is supposed to be printed. The very purpose of Section 7, it must be noted, is to avoid any unnecessary dispute as to who is the person responsible for the publication. The Printer and/or Publisher as also the Editor shall be so liable under Section 7 for every portion of the publication.

9. The learned counsel for the petitioners does not raise any dispute regarding the liability of the Editor, but contends that different must be the approach when it comes to the Printer and/or Publisher. According to me, the language of Section 7 is simple and plain. It does not admit of any doubt. It does not permit any distinction to be made between an Editor in contra distinction to a Printer/Publisher. Both have identical liability. It

would be puerile to sail to a conclusion from the language of Section 7 that the Printer and/or Publisher has no responsibility in respect of the publication. Such a contention is against the plain language of Section 7.

10. We have seen several controversies raised before this Court as well as the Supreme Court about the liability of the Editor. Editor by definition in Section 1 means "the person who controls the selection of the matter that is published in a newspaper." Where the name of only one person is printed as the Editor perhaps there is no room for any controversy as in the instant case. But there may be cases where the publications carry names of Managing Editor, Chief Editor, Resident Editor etc. When there are plurality of Editors, who have interesting adjectives to describe themselves, the question has often been raised as to who among them, whose names appear in the publication as such editors can be mulcted with liability with the aid of the presumption under Section 7. All the decisions dealing with the sweep of the expression Editor, to which reference has been made at the Bar relate to the attempt to resolve that controversy. That controversy does not arise in this case. Observations from such decisions, where the crucial question was about the identification of the Editor from a group of Editors, who must be made liable under Section 7 cannot be

extracted out of context. In such case we find observations to the effect that only the Editor, who satisfies the definition of Editor in Section 1, can be mulcted with the liability of the presumption under Section 7. Those decisions have not pointedly considered the liability of the Printer and/or Publisher for the publication with the aid of the presumption under Section 7. Printer and Publisher can be identified on the basis of the declaration. Unlike plurality of Editors, whose names are printed in the newspaper, the declaration under Section 5 contemplates only one Printer and one Publisher. The responsibilities may fuse in one person and he can be the Printer and Publisher. The fact that these decisions referred above deal with the liability of the Editor only under Section 7 cannot in any case be understood out of context to assume that the Printer and/or Publisher has no liability under Section 7. That would be a case of appreciating precedents without understanding the context.

11. My attention has been drawn to various decisions in **Haji C.H. Mohammad Koya** v. **T.K.S.M.A. Muthukoya** (AIR 1979 SC 154), **Mathew** v. **Nalini** (1987 (2) KLT 286), **K.M. Mathew** v. **Nalini** (1988 (2) KLT 832), **Jacob Mathew** v. **Gangadharan Nair** (2001 (2) KLT 412) etc. But in none of those cases the responsibility of the

Printer and/or Publisher in the light of the presumption under Section 7 did arise for consideration at all. Those decisions cannot at all be considered as helpful to identify the burden of a Printer and Publisher in respect of the publication, for which he has given the declaration under Section 5.

12. The learned counsel for the respondent alertly points out that the decision in **Ramesh Chander** v. **The State** (AIR 1966 Punjab 93) had considered this crucial question specifically. In that decision Justice H.R. Khanna makes the following observations in paragraph 6:

> "6. It has next been argued that the news item in question was published without the knowledge of the accused because he had entrusted the selection of news to the editor of the paper and as such the accused is not responsible for the impugned news item. In this connection I find that the accused is admittedly the printer and publisher of the Hind Samachar. The accused also filed declaration dated 29th August, 1957 Exhibit P.C. under Section 5 of the Press and Registration of Books Act, 1867 (Act XXV of 1867), and declared therein that he was the printer and publisher of the Hind Samachar. Section 7 of that Act inter alia provides that the production in any legal proceeding of an attested copy of such declaration shall be held (unless the contrary be proved) to be sufficient evidence as against the person whose name shall be subscribed to such declaration that the said person was the printer or publisher of every portion of the newspaper in question. <u>As the accused was the printer and publisher of the Hind Samachar at the relevant time and had filed the declaration to that effect, it shall be presumed that the accused was aware of what was printed and published in the issue of the Hind Samachar.</u>

> The declaration is prima facie evidence of the publication by the accused all the news items in the Hind Samachar and I have not been referred, at the hearing of the appeal, to any cogent material to show that the presumption about the accused being the publisher of the news item in question has been rebutted. The mere fact that, according to the accused, in daily routine he had asked the Editor to select the news item, would not absolve the accused for the publication of the news item in question."
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> (emphasis supplied)

13. The learned counsel for the respondent further points out that the liability of a printer and publisher under Section 7 did come up for consideration incidentally in **Mamman Mathew** v. **Instrumentation Ltd.** (1988 (2) KLT 438). In paragraph 8 of the said decision, the following passage appears:

> "8. The complaints were on the basis of the materials published in two issues of Malayala Manorama, Calicut Edition. In that paper the person responsible for the publication was printed as "Printed and Published by Mammen Varghese at the M.M. Press, Calicut for the Malayala Manorama Co. Ltd., Kottayam. Managing Editor: Mammen Mathew, Chief Editor: K.M. Mathew. Sri.Mammen Varghese satisfies the description of Editor under the act. He is the person responsible for the selection and publication of the material seen in the two issues. The presumption u/S. 7 of the Act is applicable to him. He cannot disown his liability."

It is true that it is mentioned that Mammen Varghese satisfies the description of Editor in this Act. The conclusion appears to be inescapable

that he was and was only the printer and publisher of the newspaper and the word editor is a printer devil. Of course, in the light of that controversy, it may not be possible to place reliance on the said observations in paragraph 8 to found any conclusion. I do not propose to do that also.

14. Be that as it may, from the plain language of Section 7 read along with Section 5 and from the discussions in paragraph 6 of **Ramesh Chander** referred above, the conclusion is inescapable that a printer and/or publisher under Section 7 must be held to be responsible for the publication in its entirety until he discharges his burden as contemplated under Section 7. At this stage the first petitioner cannot claim that he has discharged the said burden.

15. I may conclude by observing that a printer and/or publisher, who has declared himself to be the printer and publisher under Section 5, has liability for the publication in its entirety, including portions, until he discharges the burden to rebut the presumption under Section 7.

16. The learned counsel for the petitioner submits that there are no specific averments in the complaint that the first petitioner/accused has any responsibility for the publication. When it is averred and shown that he is the printer and publisher, it would be idle for the court at least at this stage

to look for specific allegations regarding the complicity of such printer and publisher. The complainant is armed with the presumption under Section 7 and once he asserts and that assertion remains uncontroverted now that the first petitioner is the printer and publisher, it would be improper to concede any benefit to the accused on the ground that further detailed averments about responsibility of such printer and publisher have not been made.

17. It follows from the above discussions that this Crl.M.C. is without any merit and the petitioners are not entitled to any relief.

18. The learned counsel for the petitioners contends that warrants of arrest are pending against the petitioners as they have not appeared before the learned Magistrate. He further submits that unnecessary insistence on the personal presence of the petitioners/accused would cause great prejudice, hardship and inconvenience to the petitioners. In these circumstances it is prayed that the learned Magistrate may be directed to exempt the petitioners from personal appearance. I do not think any specific or special directions are necessary. The petitioners can appear through counsel and pray for exemption from personal appearance. Appropriate orders shall be passed by the learned Magistrate on such applications. The mere fact that non-bailable warrants are pending against

the petitioners cannot in any way divest the learned Magistrate of the jurisdiction or obligation to consider such applications for exemption. To avoid any controversy on that aspect, it is directed that the non-bailable warrants shall not be executed for a period of one month from this date, within which period the petitioners can appear before the learned Magistrate through counsel or personally and apply for exemption/bail.

19. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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